

**FINDINGS AND RECOMMENDATIONS FOR ISSUANCE OF AN ESA SECTION  
10(a)(1)(B) INCIDENTAL TAKE PERMIT FOR THE MEIER GROUP LLC HABITAT  
CONSERVATION PLAN, THURSTON COUNTY, WASHINGTON**

**I. DESCRIPTION OF PROPOSED ACTION**

**A. Introduction**

On August 12, 2015, The Meier Group, LLC (Applicant), submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) and submitted a Habitat Conservation Plan (the Meier Group HCP) (Ramboll 2016) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA) (16 USC §1531-1544). This document presents the Service's analysis and findings whether the Meier Group HCP meets the ITP issuance criteria described in section 10(a)(2)(B) of the ESA.

Documents used in preparation of this statement of Findings and Recommendations include the Meier Group HCP (Ramboll 2016), the Service's biological opinion on the ITP application (Service 2016), and the Environmental Assessment (EA) prepared to comply with the Service's National Environmental Policy Act of 1969 (NEPA; 40 CFR 1505.2) responsibilities to analyze the effects of issuing the proposed ITP (Environ 2016). These documents are hereby incorporated by reference as described in 40 CFR 1508.13.

The Meier Group HCP acknowledged that the proposed covered activities could not completely avoid incidental take of species listed as threatened or endangered under the ESA, and specified as follows:

1. The impacts likely to result from such taking.
2. What steps the Applicants will take to minimize and mitigate such impacts, and the funding available to implement such steps.
3. What alternative actions to such taking the Applicants considered and the reasons why such alternatives were not being utilized.
4. Other such measures required as necessary or appropriate for the purposes of the plan.

The Service included the "Five Point Policy" as an addendum to the Habitat Conservation Planning Handbook on July 3, 2000 (65 FR 35242). The policy emphasizes the development of biological goals and objectives, adaptive management strategies, monitoring provisions, ITP duration considerations, and public participation in HCPs as a way to increase their effectiveness. The Meier Group HCP addresses all aspects of the "Five Point Policy".

The biological opinion documented the Service's determination that the activities conducted in compliance with the requested ITP are not likely to jeopardize the continued existence of the covered species or result in the destruction or adverse modification of designated critical habitat for any listed species.

The EA analyzed and compared three alternatives and the resulting effects on the human environment: 1) the proposed action, issuance the requested ITP; 2) a no action alternative; and 3) an avoidance alternative.

#### B. Covered Species and Covered Lands

The requested ITP would authorize incidental take of the threatened Olympia subspecies of Mazama pocket gopher (*Thomomys mazama pugetensis*) (the covered species) for a period of 5 years.

The geographic boundaries of the HCP consist of a plan area that includes all relevant aspects of the proposal including the ranges of listed species that may be affected and the permit area where covered activities will occur. The plan area for the Meier Group HCP occurs within the range of the Olympia subspecies of the Mazama pocket gopher in Thurston County, Washington, and includes the Linderson Way project development site and the Bush Prairie Farm mitigation site. Though additional candidate, threatened, and endangered species may occur within the plan area, the covered activities are not expected to result in incidental take of any candidate, threatened, or endangered species beyond those described in the HCP. The Applicant therefore did not include any additional candidate, threatened, or endangered species in the HCP. We determined that only the Olympia subspecies of the Mazama pocket gopher is likely to be adversely affected by the proposed action, and clarify here that the “No Surprises Rule” assurances (63 FR 8859) apply only to this species as described in the conservation plan and listed on the ITP.

The permit area consists of the approximately 6.4-acre project development site located in Thurston County, Washington (see figures 2 and 3 in the HCP). Descriptions of the size, location, and other pertinent information for the project development and conservation sites (mitigation sites) are found in the HCP Plan Area (HCP pages 5-11), and in HCP Appendix A.

#### C. Covered Activities

The proposed project involves the construction of an office building and associated infrastructure such as parking lots described in Section 5 of the HCP (pages 11-15). The project will require clearing most of the 6.4-acre development site of trees, brush, degraded grassland and other vegetation, site preparation activities, and construction.

Covered activities include the following:

1. Vegetation removal, including the use of heavy equipment and trucks to clear and remove debris from the site.
2. Site preparation activities such as excavation, grading, soil re-distribution, and soil storage on-site.
3. Construction activities including materials delivery and staging; erecting forms and laying concrete and paved porous parking lot surfaces; and constructing the commercial building and associated structures.

#### D. Proposed Impacts

In the biological opinion (Service 2016) the Service analyzed the effects of covered activities and the type and amount of take of the covered species anticipated to occur over the 5-year duration of the proposed ITP.

The Service anticipates incidental take of the covered species will be difficult to detect for the following reasons: the Olympia subspecies of the Mazama pocket gopher is fossorial, and as such finding a dead or injured specimen is unlikely. However, the following level of take of this species can be anticipated by changes in habitat area and exposure of suitable habitat to equipment operation on the development site:

Take of the Olympia subspecies of the Mazama pocket gopher is anticipated in the form of harm caused by habitat loss and equipment operation that is likely to injure or kill individual pocket gophers of all life stages on the Linderson Way development site. This effect will occur at the onset of site preparation for construction, which the Applicant will implement as early as possible after ITP issuance.

The mitigation site will provide 2.5 acres of highly productive habitat for the covered species at the start of HCP implementation and in perpetuity. The mitigation site is a single patch of high-quality habitat with good connectivity to other protected habitats and to the largest source population of the Olympia subspecies of the Mazama pocket gopher. Compared to the Linderson Way project development site, the better forage on the Bush Prairie Farm mitigation site and its connectivity to other high-quality habitat will serve to maintain a highly productive site for the covered species.

#### E. Conservation Strategy

The Conservation Program in the Meier Group HCP (pages 25 - 28) describes the Applicant's strategies to provide for the conservation of the covered species, and consists of six components:

1. Biological Goals
2. Biological Objectives
3. Minimization Measures
4. Mitigation Measures
5. Monitoring Plan
6. Adaptive Management Plan

The Applicant's biological goals for the HCP are to contribute to the conservation of the Olympia subspecies of the Mazama pocket gopher by permanently conserving habitat to maintain viable populations of this subspecies in the plan area.

Biological objectives describe measurable performance targets to evaluate progress towards achieving the program's biological goals. Objectives provide benchmarks for determining the effectiveness of the conservation program and inform effective adaptive management over the duration of the ITP. To achieve the biological goals established for this HCP, the Applicant will:

1. Execute a Conservation Easement at the Bush Prairie Farm permanent conservation site consisting of no less than 2.5 acres of habitat occupied by the Olympia subspecies of the Mazama pocket gopher;
2. Ensure that the Bush Prairie Farm permanent conservation site will benefit the Olympia subspecies of the Mazama pocket gopher by reducing the threat of habitat loss and fragmentation by extinguishing any future subdivision or development rights associated with the site;
3. Ensure that the Bush Prairie Farm permanent conservation site is managed in a manner that is compatible with, and benefits, the Olympia subspecies of the Mazama pocket gopher by preparing a Management Plan, in keeping with these objectives and provide a copy of the plan to the Service;
4. Provide funding to implement the ongoing management actions or documentation verifying that such management actions have been provided for;
5. Ensure that the management actions benefitting the Olympia subspecies of the Mazama pocket gopher shall be perpetual;
6. Complete these tasks no later than December 31, 2016.

#### Minimization Measures

The Applicant's development proposal will require site preparation and construction activities that will impact the entire project site, therefore limiting the type or amount of minimization measures that could be implemented to reduce impacts to the covered species. The Applicant agreed to allow, support, and fund trapping and translocation actions for the covered species as a minimization measure if determined by the Service to be beneficial to the conservation of the species.

#### Mitigation Measures

The HCP describes permanent measures intended to mitigate the impacts of the taking resulting from the covered activities. The 2.5-acre Bush Prairie Farm conservation site will serve to offset the impacts of the taking resulting from covered activities associated with the Linderson Way project development site. The conservation site is within a Reserve Priority Area for the Olympia subspecies of the Mazama pocket gopher. The Service identified these areas as important for the conservation and recovery of the listed species in the Olympia subspecies of Mazama Pocket Gopher Conservation Strategy and Mitigation Guidance memorandum (Service 2015). The conservation of the Bush Prairie Farm site will eliminate the threat that this site could be developed, and therefore reduce fragmentation and loss of habitat considered important for the long-term survival and recovery of the species.

#### Monitoring

Monitoring is essential to determining and documenting the success of the plan's conservation program, informing adaptive management efforts, and in collecting information needed to meet reporting requirements. In the HCP, the Applicant commits to implement compliance monitoring intended to document implementation of the terms and conditions of the requested

ITP, and effectiveness monitoring documenting how the stated biological goals and objectives are being achieved.

The Applicant will prepare an annual report to be submitted to the Service's Washington Fish and Wildlife Office in Lacey, Washington and the Service's Regional Office in Portland, Oregon no later than November 1 of each year for the duration of the ITP. The annual report will address each of the ITP terms and conditions and describe the ongoing management of the conservation site. Monitoring and reporting for the conservation site will continue beyond the duration of the ITP, and will be summarized in a report submitted to the Service once every five years after ITP expiration.

### Adaptive Management

Uncertainty regarding biological or ecological factors impacting the covered species on the conservation site that can be affected with recurring management actions (such as invasive and woody plant species control) will be addressed by testing and comparing alternative approaches with control treatments. Results will be evaluated and subsequent management will be modified to reflect the improved understanding resulting from such testing. The study design, methods, results, and modifications to ongoing management activities will be described in the annual report provided by the conservation site manager. Any change/adaption to the management regime will be developed in coordination with the Service, and based on best available science and focused on ensuring that the biological goals described in the HCP are achieved.

## **II. ANALYSIS OF EFFECTS**

The effects of the proposed action and impacts from HCP implementation are fully analyzed and described in the Service's biological opinion (Service 2016) and in the EA (Environ 2016) and are summarized here.

The adverse effects on the Olympia subspecies of the Mazama pocket gopher from HCP implementation will result from habitat loss on the development site and habitat maintenance on the mitigation site. Construction activities on the development site will fill, grade, and otherwise destroy soil conditions that are important to the pocket gophers occupying that site. When construction begins, all individuals present on the development site will be permanently displaced, injured, or killed. Construction activities associated with developing the Linderson Way site immediately after ITP issuance will significantly disturb, permanently displace, injure, or kill all of the pocket gophers, including all life history stages, on the 2.7 acres of suitable habitat.

Because we anticipate the Olympia subspecies of the Mazama pocket gopher on the development site has low long-term productivity and resilience, it is extremely unlikely that the habitat losses will amount to a measurable demographic effect on the subspecies. In fact, we expect that HCP implementation will have a positive demographic effect on the Olympia subspecies of the Mazama pocket gopher because of productivity and resilience as a result of perpetual management for higher-quality habitat on the mitigation site. The adverse effects of equipment operation for habitat maintenance include collapsing tunnels, and are unavoidable effects of



managing habitat to maintain or enhance the productivity of the Olympia subspecies population of the Mazama pocket gophers. These activities will be monitored and their frequency, intensity, or locations will be adjusted to avoid reducing survival and reproduction of the covered species on covered lands. The proposed habitat maintenance activities will benefit the Olympia subspecies population of the Mazama pocket gophers in the action area.

### **III. PUBLIC INVOLVEMENT**

The Service made diligent efforts to involve the public by making the draft Meier Group HCP and the associated draft EA available for review and comment. We published a Notice of Availability (NOA) with a request for review and comments in the *Federal Register* on October 26, 2015 (80 FR 65238). The NOA described the proposed Federal action (i.e., issuance of an ITP) and the purpose and need for the action. The public comment period closed on December 28, 2015.

The Service received a single comment during the public review and comment period. The written comment submitted via email did not provide substantive comments that required changes to the draft HCP, the draft EA, or other response. The full text of the single comment received was appended to the EA as “Appendix B. Public Comments Received”.

### **IV. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS**

Section 10(a)(1)(B) of the ESA requires that the Service determine, after public comment, that five issuance criteria are satisfied before an ITP can be issued. The five issuance criteria and our analysis and findings follow.

1. The taking will be incidental.

We determined that the taking of the covered species under the Meier Group HCP will be incidental to otherwise lawful activities. The activities for which incidental take coverage are sought under the ITP include actions related to vegetation removal, including the use of heavy equipment and trucks to clear and remove debris from the site; site preparation activities such as excavation, grading, soil re-distribution, and soil storage; and construction activities including materials delivery and staging, erecting forms and laying concrete and paved porous parking lot surfaces, and constructing a commercial building and associated structures. Any take anticipated from the covered activities under the HCP will be incidental to, and not the purpose of these otherwise lawful activities.

2. The applicant(s) will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.

We find that the Applicant has minimized and mitigated for the impacts of such taking to the maximum extent practicable.

The Applicant agreed to allow, support, and fund trapping and translocation actions for the covered species as a minimization measure if determined by the Service to be beneficial to the conservation of the species.

The approximately 2.7 acres of degraded grassland that constitutes the covered species-occupied or potentially occupied habitat on the project development site is largely vegetated with less-preferred gopher foods such as grasses surrounded by areas invaded by woody and other invasive vegetation. The project site is surrounded by residential and commercial development consisting of significant areas of impervious surfaces and disturbed landscapes that do not provide habitat for or support the covered species.

Individuals of the covered species in areas with less-preferred or limited food items would be expected to require larger home ranges and more extensive burrow systems to secure needed resources. Individuals of the Olympia subspecies of the Mazama pocket gopher are known to be antagonistic toward one another (except when breeding) which generally results in avoidance behavior that tends to distribute individuals in areas with suitable habitat. These characteristics suggest that activities in areas with lower habitat suitability could be expected to impact fewer individuals when compared to habitat impacts in areas with higher relative habitat quality.

The Applicant proposes to compensate for the impacts of the taking by permanently conserving a 2.5-acre site known to be occupied by the covered species. The Applicant has committed to secure a Conservation Easement that extinguishes future development and subdivision rights associated with the property, and ensures that the site will be perpetually managed for the benefit of the covered species.

The conservation site consists of high quality gopher-occupied habitat near the only dedicated critical habitat unit for the Olympia subspecies of the Mazama pocket gopher. The site is currently zoned for commercial and industrial development, and its close access to the transportation corridor of Old Highway 99SE and proximity to the Olympia Regional Airport make the site a likely target for conversion to commercial, industrial, or warehouse facilities. The site is adjacent to existing residential development to the north and east of the site, and commercial and warehouse facilities to the north and west. Securing this parcel for permanent protection will reduce the threat of further habitat loss and fragmentation, and will expand the largest block of contiguous habitat permanently managed for this listed species.

The Applicant's proposal would compensate for the loss of an area of moderate quality gopher habitat located in a landscape context unlikely to contribute to the long term survival of the species by setting aside a permanently protected occupied site of higher habitat quality. The proposed mitigation site is near the only designated critical habitat unit for the Olympia subspecies of the Mazama pocket gopher and immediately adjacent to a proposed conservation reserve. The mitigation approach of offsetting moderate quality habitat located in areas with low potential to contribute to recovery with higher quality permanently managed conservation lands is consistent with other HCPs covering this species. The overall reduction of 2.7 acres of moderate quality burrowing and foraging habitat available to the Olympia subspecies of Mazama pocket gopher will be sufficiently offset by the permanent protection of the higher quality habitat site, managed for the conservation of the species, and that may contribute to the long-term

survival and recovery of the species. For these reasons, we find that the proposed mitigation under the HCP is commensurate with the level of take impacts anticipated over the duration of the ITP.

The HCP provides monitoring and adaptive management strategies intended to increase the effective management of the covered species, providing and managing occupied habitats for this species, and promoting the long-term conservation of the covered species and its habitats. The Applicant has included provisions for reasonably foreseeable changed circumstances (HCP pages 29-30). These strategies ensure that the effects of potential taking resulting from changed circumstances will also be minimized and mitigated to the maximum extent practicable. On that basis, we find that the Applicant has minimized and mitigated for the impacts of such taking to the maximum extent practicable.

3. The applicant(s) will ensure that adequate funding for the plan will be provided.

The Service finds that the Applicant has ensured funding adequate to implement the HCP. The Applicant's projected costs and the fiscal mechanisms that will be used to fund implementation of the plan are described in the HCP and in HCP Appendix A "Mitigation Land Development Right Purchase Agreement and Conservation Site Management Plan Outline." We find that the Applicant has provided assurances that they will provide funding to implement the measures described in the HCP by placing the required funds in an escrow account as described in HCP Appendix A.

The Service's "no surprises" assurances and measures to address changed circumstances are described in the HCP. The Applicant has committed to an adaptive management process that will modify monitoring, conservation, mitigation, or management measures (HCP pages 27-28). Unforeseen circumstances will be addressed through close coordination between the Service and the Applicant (HCP pages 29-31). We find, therefore, that the Applicant's conservation plan and financial commitments, along with their willingness to address changed and unforeseen circumstances in a cooperative fashion, satisfies this criterion.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The legislative history of the ESA establishes the intent of Congress that this issuance criteria be based on a finding of "not likely to jeopardize" under Section 7(a)(2) (see 50 CFR 402.02). As a result, proposed issuance of the permit has been reviewed by the Service under Section 7 of the ESA. Our biological opinion concluded that the proposed issuance of the ITP will not jeopardize the continued existence of the covered species in the wild, as described above. No designated critical habitat is present in the action area, and so no designated critical habitat for any listed species are expected to be destroyed or adversely modified.

5. The measures, if any, required under subparagraph (A)(iv) will be met; and the Secretary of the Interior has received such other assurances as (s)he may require that the plan will be implemented.



The Service assisted the Applicant in developing the HCP, commented on draft documents, participated in numerous meetings and conference calls, and worked closely with the Applicant throughout the planning and document preparation phases of the proposal to ensure that the conservation needs of the covered species would be assured and that recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP. The Applicant will submit an annual report to the Service each year the ITP is in effect describing implementation of avoidance, monitoring, minimization, and mitigation measures as described in the HCP. Coordination measures have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (through adaptive management measures) or if changed circumstances occur over the duration of the ITP. It is our finding that no additional measures are required to implement the intent and purpose of the HCP and the associated ITP.

#### **V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS**

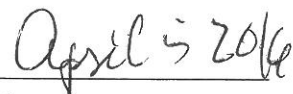
The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b) – (c). The Applicants have met the criteria for the issuance of the permit and there are no disqualifying factors that would prevent the permit from being issued under current regulations.

#### **VI. RECOMMENDATION ON PERMIT ISSUANCE**

Based on the foregoing findings with respect to the proposed action, issuance of an ITP to authorize incidental taking of the Olympia subspecies of Mazama pocket gopher (*Thomomys mazama pugetensis*) listed as threatened under the ESA, by the Applicant, in accordance with the HCP, the biological opinion, and Final EA, is recommended.



Theresa Rabot,  
Deputy Regional Director, Region 1  
U.S. Fish and Wildlife Service



Date

## **VII. References Cited**

Environ International Corporation (Environ). 2016. Environmental Assessment, The Meier Group LLC Mazama Pocket Gopher Habitat Conservation Plan. Project number 30-34763B. January 2016. 30 pp. + appendices.

Ramboll Environ US Corporation (Ramboll). 2016. The Meier Group LLC Mazama Pocket Gopher Habitat Conservation Plan. Project number 30-34763A. February 2016. 37 pp. + appendices.

U.S. Fish and Wildlife Service (Service). 2015. Mazama Pocket Gopher Conservation Strategy and Mitigation Guidance. Memorandum. July 01, 2015. 22 pp.

U.S. Fish and Wildlife Service (Service). 2016. Intra-Service Biological Opinion for the Meier Group LLC Mazama pocket gopher Habitat Conservation Plan. Service reference 01EWF00-2016-F-0519. 26 pp. + appendices.